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WC Docket No. 07-97
August 31, 2007**

methodologies in an attempt to mask the essential lack of a sufficient showing of independent facilities-based competition.

Qwest's showing is characterized by a number of persistent flaws and weaknesses throughout each of its Petitions. Qwest does not provide wire center level information, but relies variously on MSA, state, or nationwide data without any rhyme or reason. As pointed out in the attached Declaration of Economics and Technology, Inc. ("ETI"), in most cases Qwest fails to account for its own role as the underlying provider of services on which competitors depend to provide service.⁴⁵ Qwest additionally conflates lines served with projections of future competition as if projections were current competitive lines.

Qwest's flawed, confusing, and unexplained overall approach to estimating competition confounds any reasoned conclusions based on its Petitions as to the state of competition in the MSAs in question. It would be fundamentally irrational and unlawful for the Commission to rely on this showing to demonstrate or estimate competition, market share, or "coverage" at the MSA or any geographic market level. The Commission should conclude that the overall analytical weakness of Qwest's showing precludes any serious consideration of Qwest's Petitions.

As discussed further below, Qwest's various approaches to estimating competition are additionally flawed even when viewed individually with respect to separate market segments.

⁴⁵ ETI Declaration at ¶ 15.

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**B. Qwest Has Not Presented Any Wire Center Level Evidence of “Coverage”
By Independent Facilities-Based Competitors**

In the *Omaha Order*, the Commission *denied* Qwest’s request for forbearance from § 251(c)(3) loop and transport unbundling obligations throughout the Omaha MSA.⁴⁶ It found that the evidence Qwest presented in its Petition only warranted forbearance “in locations where Qwest faces sufficient facilities-based competition to ensure that the interests of consumers and the goals of the Act are protected under the standards of section 10(a)[]”⁴⁷ and therefore only granted forbearance as to particular wire centers where competitors had voice enabled facilities coverage to 75 percent of end users in each wire center.⁴⁸

Thus, the Commission has already considered and rejected Qwest’s request that the Commission measure “facilities-based coverage on an MSA basis,” and found that “[u]sing such a broad geographic region would not allow [the Commission] to determine precisely where facilities-based competition exists, which are the only locations in which we have determined that the forbearance criteria of section 10(a) are satisfied with respect to section 251(c)(3)

⁴⁶ *Omaha Order*, ¶ 61; *see also Anchorage Order*, ¶ 15 (rejecting “ACS’s request that the Commission consider the entire Anchorage study area as the relevant geographic market”).

⁴⁷ *Omaha Order*, ¶ 61.

⁴⁸ In the *Omaha Order*, the Commission granted “Qwest forbearance from obligations to unbundled loops and transport pursuant to section 251(c)(3) in wire centers where Cox’s voice-enabled cable plan covers at least” 75 percent of “end user locations that are accessible from that wire center.” *Omaha Order*, ¶ 62. Likewise, in the *Anchorage Order*, the Commission gave significant weight to the fact that in the 5 wire centers where it granted forbearance, GCI had “voice-enabled cable plant” to at least 75 percent of “the end user locations that are accessible from those wire centers.” *Anchorage Order*, ¶ 21.

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unbundling obligations.”⁴⁹ Forbearance from these obligations would only be appropriate “when the evidence ... *is presented* on a basis that allows [the Commission], *in an administrable fashion and consistent with the Commission’s precedent*, to make findings on a wire center basis”⁵⁰ as it did in the *TRRO*.⁵¹

Qwest ignores the requirements of the *Omaha Order* by failing to offer any analysis of independent facilities-based competition on a wire center basis. It does not provide the actual geographic locations of loop and transport facilities competitors have deployed by wire center or evidence that competitors have sufficient coverage in each or any of the wire centers in each of the four MSAs.⁵² Qwest does provide the “highly confidential” number of lines in each wire center served by competitors that use various Qwest services such as UNEs, Section 251(c)(4) resale, and so-called “commercially negotiated” UNE-P replacement products QPP/QLS broken down for the residential and business market segments, but this does not show the existence of any independent last mile facilities as envisioned by the *Omaha Order*. This wire center information is completely irrelevant to showing facilities-based competition at the wire center level.

⁴⁹ *Omaha Order*, n.186; *see also Anchorage Order*, ¶ 15.

⁵⁰ *Omaha Order*, n.61 (emphasis added).

⁵¹ *TRRO*, ¶ 82 (rejecting proposals that conclusions be made on an MSA basis), ¶ 87 (basing transport impairment on a wire center-based test), ¶ 155 (finding that the geographic area served by a wire center is the appropriate geographic market to determine impairment), ¶ 164 (rejecting proposals that impairment of high-capacity loops be determined based on MSAs).

⁵² Qwest has provided maps to show the extent of competitive CLEC facilities throughout each of the MSAs, *see, e.g.*, Phoenix Petition at Confidential Exhibit 4. However, Qwest does provide show information on a wire center basis nor does it provide the extent of actual competitive facilities *to end users* in each of the wire centers.

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Although Qwest states that cable operators networks in the MSAs overlap with wire centers that account for high percentages of its residential and business lines, this does not identify these wire centers. Even assuming that cable plant provides a telecommunications capability, which is not the case, it could be that large percentages of Qwest's customers could be in a few wire centers in these MSAs and that in areas served by most wire centers there is no cable plant capable of providing telecommunications service.

If for no other reason, the Commission therefore should, as noted, summarily deny Qwest's Petitions for unbundling relief, especially since the Commission is "under no statutory obligation to evaluate [a] Petition other than as pled."⁵³ While "sections 10(a) and 10(c) each provide ... sufficient authority to grant [a] Petition in part — that is, [with respect to 251(c)(3) loop and transport forbearance requests] only in certain wire centers,"⁵⁴ the Commission will exercise this authority only when the Petitioner provides evidence on a wire center basis in the Petition.⁵⁵ Qwest has not done so, which is fatal to its request.

C. Qwest's Presentation of Competition in the Mass Market Is Unpersuasive

Qwest's showing of competition in the residential market consists of assertions of residential line loss in comparison to growth in households; estimates of "communications connec-

⁵³ *Omaha Order*, n.161.

⁵⁴ *Id.* (citing 47 U.S.C. § 160(a) (granting the Commission forbearance authority independent of a filed petition), (c) (authorizing the Commission to grant to grant or deny a forbearance petition in whole or in part)).

⁵⁵ *Id.*, n.186.

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tions;” statements concerning the offering or availability of services from cable operators; the availability of Qwest wholesale alternatives; assertions about the number of CLECs operating in the MSA; and non-MSA specific generalized information about VoIP and wireless services. Although when viewed together this *pot pourri* of approaches to measuring competition is incoherent, each showing is unpersuasive individually and as a whole for a number of reasons as well.

Loss of Retail Lines. Qwest contends that it has lost significant residential retail lines. It claims, for example, that its residential switched access lines in Phoenix have declined from ** **Begin Confidential** in 2000 to in 2006, or % **End Confidential** **. ⁵⁶ It attributes this loss to a wide and growing availability of cable telephony as well as other alternatives including VoIP and wireless service. Moreover, according to Qwest, these losses have occurred against the backdrop of growth in households.

As pointed out in the attached declaration of ETI, Qwest’s analysis fails to account for substitution of broadband service obtained from Qwest for its customers’ second lines. ⁵⁷ As explained there, as of 2000 up to one-fifth of residential access lines in service were secondary lines. By 2005, secondary lines had dropped by 50%, while broadband access lines substantially increased. In each of the four states in which Qwest seeks forbearance, the increase in broadband lines significantly exceeded the drop-off in ILEC dial-tone lines. Accordingly, without account-

⁵⁶ Phoenix Petition at 17.

⁵⁷ ETI Declaration, ¶ 18.

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ing for second line substitution, Qwest's line loss counts in the residential market are meaningless in terms of measuring competition.

Qwest's residential line loss information is also unpersuasive, because it does not show the extent to which these lost retail lines are served by competitors using Qwest facilities. Over-the-top VoIP providers may be providing service over Qwest DSL service subscribed to by the end user. Some of Qwest's lost retail lines may merely have been lost to CLECs that provide service via Qwest's wholesale services. Because Qwest has not provided the number of retail lines lost to providers that continue to be dependent on Qwest facilities, its statements of retail line losses do not show independent facilities-based competition.

Qwest's statements about household growth are also misleading because household growth may be occurring to a significant extent in greenfield developments that were not previously served by any telephone company, especially in areas such as Phoenix. Qwest may be facing no significant independent facilities-based competition outside of greenfield developments. Without wire center information, Qwest's assertions of household growth have no probative value concerning the extent of independent facilities-based competition.

CLECs Operating in the MSAs. Although Qwest claims that there are a large number of CLECs providing extensive mass market retail competition in each MSA, according to the way it reports this information, it appears that all of them are providing service either using Qwest UNEs, its UNE-P replacement product, or resale. Thus, while it claims, for example, that over

**** Begin Confidential End Confidential **** unaffiliated CLECs are providing service in

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Denver, it also claims that **** Begin Confidential End Confidential **** are doing so via resale, **** Begin Confidential End Confidential **** via QPP, and **** Begin Confidential End Confidential **** via UNES.⁵⁸ While it claims that **** Begin Confidential End Confidential **** CLECs are providing service via their own non-Qwest network facilities,⁵⁹ this does not imply that these CLECs are not also using Qwest facilities. Thus, Qwest has not shown that there are any CLECs that are able to provide service in any of the MSAs without reliance on Qwest facilities. Nor has it explained where or how it obtained information concerning CLECs and how they provide service. by its own admission, only a small minority of competitive carriers in the subject MSAs do not rely on Qwest's network facilities to provide service.

To estimate the number of CLEC in-service residential access lines Qwest reasons that since its internal data shows that about 75% of Qwest's residential lines are listed in white pages, that same percentage must therefore hold true for CLEC customers. However, Qwest fails to provide any explanation of how it determined this percentage or why it should be correct for all CLECs. Nor does this unexplained projection show that CLECs are nor reliant on Qwest facilities.

⁵⁸ Denver Petition at 9 (**** Begin Confidential of End Confidential **** CLECs in the MSA using non-Qwest network facilities to provide service); Minneapolis Petition at ; Phoenix Petition at 9 (**** Begin Confidential of End Confidential **** CLECs in the MSA using non-Qwest network facilities to provide service); Seattle Petition at 9 (**** Begin Confidential of End Confidential **** CLECs in the MSA using non-Qwest network facilities to provide service).

⁵⁹ Denver Petition at 9.

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In addition, Qwest admits to using its privileged knowledge of directory listings originated by CLECs on behalf of customers that they serve on a facilities basis – confidential information that Qwest obtains exclusively because of its ILEC status.⁶⁰ As such, the use of this information for Qwest’s own corporate ends raises concerns under Section 222(b), which prohibits a carrier from using another carrier’s proprietary information for any use other than fulfilling the provisioning carrier’s service obligations. For this reason, the Commission should decline to consider this information in this proceeding.

Wireless. Qwest states that wireless service in the MSAs is extensive, that in some of the MSAs, *e.g.*, Minnesota, the number of wireless lines exceeds the total number of CLEC and Qwest lines, and that substantial numbers of customers are “cutting the cord” to rely exclusively on wireless service.⁶¹ It contends that the *AT&T/BellSouth Merger Order* included wireless in the product market for local services to the extent customers rely on mobile wireless as a substitute for wireline service.⁶² Qwest contends that wireless service competition alone is sufficient to ensure that market forces will protect the interests of consumers even if the Commission forbears from unbundling obligations.⁶³

General wireless penetration data of the type that Qwest has provided does not support forbearance. In the *Omaha Order*, the Commission found that:

⁶⁰ *Id.*

⁶¹ Minnesota Petition at 12-13.

⁶² *AT&T-BellSouth Merger Order*, ¶ 96.

⁶³ Minnesota Petition at 14.

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Qwest has not submitted sufficient data concerning the full substitutability of interconnected VoIP and wireless services in its service territory in the Omaha MSA, and *because the data submitted do not allow us to further refine our wire center analysis, we do not rely here on intermodal competition from wireless and interconnected VoIP services to rationalize forbearance from unbundling obligations.*⁶⁴

The Commission made a similar finding in the *Anchorage Order*, noting the lack of sufficient data to evaluate the extent of substitution of wireless services in the Anchorage study area.⁶⁵ These conclusions are fully controlling here because Qwest has failed to offer anything different than what it offered with respect to Omaha.

None of Qwest's wireless information provided on a wire center basis. In addition, as noted in the attached declaration of ETI, wireless service should not be counted as an intermodal competitor because major wireless carriers remain heavily dependent on ILEC special access and transport services.⁶⁶ Further, Qwest has not shown that wireless is a genuine substitute for wireline service. Its own data shows that only a small minority of customers have "cut the cord"; for example, only 11.3% of households in the Denver area.⁶⁷ In addition, at the present time, wireless service does not provide comparable, or in some cases any, broadband access to the

⁶⁴ *Omaha Order*, ¶ 72.

⁶⁵ *Anchorage Order*, ¶ 29.

⁶⁶ ETI Declaration, ¶¶ 15, 29; *see also* Declaration of Gary B. Lindsey, Director of Access Solutions, Sprint Nextel Corp., ¶ 6 (Aug. 8, 2007) *filed as an attachment to* Comments of Sprint Nextel Corp., WC Docket No. 05-25 (filed Aug. 8, 2007).

⁶⁷ Denver Petition at 11. *See also* Minneapolis Petition at 12, Phoenix Petition at 11, Seattle Petition at 11.

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Internet. At most, therefore, wireless continues to be a complement to wireline service, not a substitute for it.⁶⁸ If wireless is not a complete substitute for landline service, there is no basis for the Commission to find that the availability of wireless service is sufficient to protect consumers in the absence of unbundling obligations.

Qwest has also overstated the Commission's conclusions with respect to wireless in the *AT&T/BellSouth Merger Order*. For purposes of consideration of adverse impacts of that merger, the Commission included wireless in the local service market "when it is used as a complete substitute for all of consumer's voice communications needs."⁶⁹ Consideration of whether a merger will unduly concentrate or otherwise harm the local telecommunications market is not the same as a forbearance analysis. Further, for the reasons stated, Qwest has not shown that wireless is anything more than a complementary service.

Accordingly, the Commission should conclude that wireless has no relevance to its forbearance analysis for the mass market.

Interconnected VoIP Providers. According to Qwest, it is experiencing a significant intermodal threat from VoIP services. It contends that because customers can, and, according to Qwest, seemingly are, subscribing to packages of services including wireline services, wireless and/or broadband Internet access, these customers have the ability to shift usage among these

⁶⁸ See UBS Investment Research, Comcast Corporation Site Visit, 20 November 2006, at 2 ("Comcast views a wireless offering as an add-on strategy to further extend its triple play bundle [which includes voice provided over wireline/cable facilities] and to reduce churn, rather than the next leg in the company's growth.").

⁶⁹ *AT&T/BellSouth Merger Order*, ¶ 95.

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three services in response to price changes from any one service.⁷⁰ Qwest asserts that because consumers have “all you can eat” pricing with these bundles, the enforcement of unbundling is not necessary to ensure that charges remain just and reasonable, and not unjustly discriminatory.⁷¹ Consistent with its deficient analysis as a whole, Qwest uses general, MSA-wide statistics and general nationwide observations from industry analysts to support its claims concerning interconnected VoIP services.⁷² Additionally, Qwest uses data regarding general market investment which shows a *potential* increase in VoIP market share to support its argument that it is already losing customers to competition.⁷³ Qwest asserts that as the number of broadband lines have increased and that “[e]ach broadband customer represents a *potential* VoIP subscriber.”⁷⁴ Qwest contends that this growth could theoretically take business away from Qwest’s wireline services.

Qwest’s submission concerning VoIP simply repeats claims the Commission expressly rejected in both the *Omaha* and *Anchorage Orders*. In the *Omaha Order*, the Commission found, among other things, that because Qwest had not submitted sufficient data showing how VoIP is a substitute for § 251(c)(3) loop and transport facilities, it did not rely on “intermodal competition from ... interconnected VoIP services to rationalize forbearance from unbundling

⁷⁰ See, e.g., Denver Petition at 19.

⁷¹ See, e.g., *id.*

⁷² See, e.g., *id.* at 7-8, 14-15.

⁷³ See, e.g., *id.*

⁷⁴ See, e.g., *id.* at 15.

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obligations.”⁷⁵ In addition, the Commission has repeatedly and correctly held that intermodal competition from VoIP providers is not a significant source of competitive restraint on traditional ILEC wireline services nor could it be deemed an equivalent substitute to an ILEC’s wireline service.⁷⁶

Just as Qwest and ACS failed to demonstrate in Omaha and Anchorage, respectively,⁷⁷ Qwest now fails again to demonstrate that consumers in the relevant markets are substituting either cable or VoIP services for its traditional wireline service. Indeed, Qwest mustered similar arguments in its previous Petitions⁷⁸ and made the same argument with respect to VoIP that customers with *access* to a broadband connection could readily switch to a VoIP provider at some point in the future.⁷⁹ ACS made similar arguments.⁸⁰ The *Omaha Order* found these

⁷⁵ *Omaha Order*, ¶ 72; *see also Anchorage Order*, ¶ 29 (concluding that “we do not include competition from wireless and interconnected VoIP services in [the] market analysis”).

⁷⁶ *See, e.g., TRRO*, n.118 & ¶ 193 n.508; *TRO*, ¶ 230.

⁷⁷ *Omaha Order*, ¶ 72; *Anchorage Order*, ¶ 29.

⁷⁸ Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area, WC Docket No. 04-223, at 9 (filed June 21, 2004).

⁷⁹ *Id.* at 12.

⁸⁰ Petition for Forbearance of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage LEC Study Area, WC Docket No. 05-281, at 16-19 (filed Sep. 30, 2005).

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arguments insufficient to “rationalize forbearance from unbundling obligations.”⁸¹ The *Anchor-age Order* also rejected these arguments.⁸²

Similarly, the Commission in the *TRRO* dismissed arguments by Verizon and SBC that the existence of intermodal competition from VoIP providers justified denial of access to UNEs for the provision of local exchange service.⁸³ The Commission found that broadband service, which is the essential underpinning to VoIP service, was not ubiquitous enough for VoIP to threaten wireline service.⁸⁴ It properly concluded that within the existing broadband market, DSL customers view VoIP service as a supplement to, rather than a replacement for, wireline service because DSL requires an existing wireline connection.⁸⁵ It therefore held that VoIP should not be viewed as “a substitute for wireline telephony.”⁸⁶ The Commission observed that granting forbearance from § 251(c)(3) unbundled loop obligations may restrict some carriers from participating in the broadband market in each of the MSAs, so it could adversely affect the availability of VoIP services as well. Consistent with its prior decisions, the Commission should decline to consider intermodal competition from interconnected VoIP services as providing significant competition. Cable Operators. In the *Omaha* and *Anchorage Orders*, the Commission granted

⁸¹ *Omaha Order*, ¶ 72.

⁸² *Anchorage Order*, ¶ 29 & n.90 (rejecting ACS’s reliance “upon general statements by industry analysts”).

⁸³ *TRRO*, at n.118.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

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limited forbearance based on the extensive presence of cable as a facilities-based competitor. Here, Qwest provides little factual information about the state of cable mass market competition in the MSAs generally, and more importantly, provides no information at all on a wire center basis for any of the MSAs. Although it states, for example, that, as of December 2006, Comcast was servicing a geographic area that encompassed multiple Qwest wire centers that account for over ****Begin Confidential % End Confidential**** of the Qwest retail residential lines in the Minneapolis-St. Paul MSA,⁸⁷ this does not show the location or “coverage” in any wire center of cable facilities that might constitute independent facilities-based competition. And, as explained in the attached declaration of ETI, even where the cable providers appear to cover a majority of an MSA, cable providers remain at a significant disadvantage in terms of providing facilities-based competition because they lack Qwest’s incumbency status in telephony.⁸⁸ Qwest says absolutely nothing about cable market share, lines served, or facilities presence within any wire center.⁸⁹

⁸⁷ See Minneapolis Petition at 7. Qwest makes similar far-reaching statements regarding the geographic areas served by cable companies in the Seattle, Phoenix, and Denver MSAs. See Seattle Petition at 7 (claiming that Comcast is serving an area accounting for **** Begin Confidential % End Confidential**** of Qwest’s residential retail lines); Phoenix Petition at 7 (claiming that Cox is serving an area accounting for **** Begin Confidential % End Confidential**** of Qwest’s residential retail lines); Denver Petition at 7 (claiming that Comcast and Millennium are serving areas accounting for **** Begin Confidential % End Confidential**** of Qwest’s residential retail lines).

⁸⁸ See ETI Declaration, ¶ 30.

⁸⁹ Qwest briefly mentions that Mediacom, Charter, and US Cable each serve some customers in the Minneapolis-St. Paul MSA without providing any data regarding penetration or whether these companies rely on Qwest’s network elements for provision of their services. See

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Furthermore, Qwest appears to equate the number of homes passed in each of the MSAs with an immediate ability to provide voice services throughout all of the MSA. For example, Qwest simply states that Comcast already passes 1.2 million homes in the Minneapolis-St. Paul MSA, and that if Comcast achieves its goal of 20% digital voice customer penetration level by 2009, “this would equate to over 200,000 Comcast Digital Voice customers.”⁹⁰ Qwest’s showing for Denver is even less persuasive. Qwest simply cites to the improvements that Comcast has invested in its Denver-area network and to Comcast’s announcement that it “would be creating more than 700 new jobs in Colorado” without providing any data on Comcast’s current telephony subscribers.⁹¹ While Qwest makes much of the fact that the largest cable provider in each subject MSA may potentially serve a large share of the mass market customers in the MSA, this speculative data by itself is not relevant information. Before the Commission can rely upon Qwest’s claims regarding cable competition for mass market telephony services, Qwest must sufficiently demonstrate that: (1) cable providers do not rely materially on Section 251(c)(3) UNEs or other Qwest wholesale facilities in the various wire centers; and (2) each cable provider

Minneapolis Petition at 9. Qwest also offers no significant or relevant data regarding these cable providers’ penetration for telephony services in the mass market on a wire center by wire center basis.

⁹⁰ See Minneapolis Petition at 7. Qwest also makes wholly irrelevant references to Comcast’s potential subscriber growth on a nationwide basis. See Minneapolis Petition at 7; Phoenix Petition at 7. These projections prove nothing about the geographic coverage or potential for subscriber or market share increase for telephony within the specific MSA at issue, let alone within the relevant wire centers within those MSAs. The Commission should therefore completely disregard such data.

⁹¹ See Denver Petition at 7.

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upon which Qwest relies is substantially present in each wire center with its own plant, including facilities and nodes technically able to provide voice-grade services. Qwest has shown neither. Even assuming *arguendo* that the nationwide growth forecasts for Comcast cited by Qwest are reliable and even if the facilities in Seattle, Denver, and Minneapolis are being deployed at approximately the same pace as the nationwide expansion, the forecasts still show that Comcast's VoIP offering (Comcast Digital Voice) is far from fully rolled out.⁹²

Accordingly, Qwest has provided no basis for any finding of independent facilities-based competition on a wire center level that could support competition.

Communications Connections. In an effort to show that it has lost market share that might meet the threshold established in the *Omaha Order*, Qwest claims that its share of residential "communications connections" in the MSAs for which it seeks forbearance varies from ** ** **Begin Confidential** % to % **End Confidential** **. ⁹³ Qwest describes a "communications connection" as any telecommunications service used by a customer including a residential access line, a wireless service, or a broadband Internet line. TNS uses billing information from a sample of customers to calculate total connections and each carriers share of those connections.

This approach to measuring market share in provisions of telecommunications service in the mass market is fatally defective, however, because, as stated by Qwest, it includes information services such as Internet access as a connection. Therefore, the shares cited by Qwest

⁹² See ETI Declaration, ¶ 30.

⁹³ Denver Petition at 19; Minneapolis Petition at 19; Phoenix Petition at 18 ; Seattle Petition at 18.

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measures in part Qwest's share of the Internet access market which has no bearing on the extent to which Qwest faces competition in provision of telecommunications service. Section 10 concerns forbearance from application of regulatory requirements to a "telecommunications carrier or class of telecommunications service." Therefore, even if it were factually valid, Qwest's connections estimate has no relevance in a Section 10 forbearance analysis.

Moreover, because connections sweeps in a range of new non-telecommunications services that have been growing, decreasing "connection shares" does not show that Qwest is losing share, only that its share of an expanding universe of services may be diluted as customers supplement their wireline services with additional services such as broadband. Further, as discussed in the attached Declaration of ETI, a significant portion of the "connections share" of other providers is likely attributable to family plans for wireless service which make it very affordable for family members, starting at age 12, to have a wireless phone, each counting as a separate connection, even while maintaining their landline.⁹⁴ Thus, Qwest has chosen "connections share" rather than a straightforward market share analysis because growth in Internet access service and wireless family plans grossly inflates competitors' share. Qwest cannot cast the availability of new services as a Qwest loss of market share that justifies forbearance of core wireline network services and facilities.

Accordingly, the Commission should reject "communications connections" as having any probative value in measuring competition in the local telecommunications market.

⁹⁴ ETI Declaration, ¶ 22.

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D. Qwest Has Not Shown Competition in the Enterprise Market

In order to show competition in the enterprise market, Qwest relies on a decline in retail lines, competition by CLECs, provision of service by cable operators and systems integrators, and the deployment of competitive fiber in the MSA. As noted in the attached ETI Declaration, this attempted separate itemization of possible competitive sources is misleading in that they are not separate but overlap. Competitive fiber is not deployed in a vacuum but by providers that fall into other Qwest categories such as CLECs or cable operators. In any event, viewed its categories together or separately, Qwest's showing is unpersuasive as discussed below.

Decline in Qwest's Retail Lines. Qwest claims that its retail business lines have declined and it has a small share of the business market in the MSAs in question. It claims that in Minneapolis, for example, its retail lines declined from **** Begin Confidential** to (%) **End Confidential** ****** from 2005 to 2006.⁹⁵ To estimate its share of the enterprise market, Qwest relies on "revenue share" based on a survey by its consultant TNS. Qwest claims that its revenue share in Minneapolis as of the last quarter of 2006 for the small business market was **** Begin Confidential % End Confidential** ****** for small business and **** Begin Confidential % End Confidential** ****** for the enterprise market. Qwest defines a small business customer as one generating less than \$1500 in monthly telecom revenue and an enterprise customer as a customer with more than \$1500 in monthly telecom spending.⁹⁶

⁹⁵ Minneapolis Petition at 28.

⁹⁶ *Id.*

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The Commission should reject this revenues showing, first, because although Qwest purports to show a decline in lines, it is obvious that revenues are not lines. A change in revenues may reflect changes in pricing or subscriptions to optional services, as opposed to changes in the number of lines served. The revenues-based approach therefore is unreliable for measuring market share. It also would be irrational to infer substantial facilities-based coverage based on competitors' revenues. A few competitors serving a few very large customers can obtain a very large share of revenues even while the ILEC controls access to the vast majority of customer locations.

In addition, it is unclear whether the revenues measured include broadband service. Since TNS included information services in its "connections" approach for the mass market, it is quite likely that it included Internet access revenues for the enterprise market as well. If so, this would inflate competitors' shares. As explained earlier, growth in broadband and new information services does not translate into a declining market share for Qwest's core telecommunications network services and facilities. Significantly, Qwest has not attempted to justify or explain why revenue share is an appropriate measure of Qwest's position in the business market segment. Qwest does not explain why it did not obtain from its consultant a survey that would show the number of lines served by competitors.

Cable Operators. Qwest's showing of cable competition in the enterprise market offers even less relevant data than its mass market showing. Qwest states that since Comcast and Cox have had success in the mass market in the subject MSAs, Qwest is eligible for forbearance

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pursuant to the FCC's finding in the *Omaha Order*.⁹⁷ Apart from the fact that Qwest has failed to show significant cable competition either on a market share or wire center facilities basis, Qwest fails to demonstrate, that that cable competitors are able – or will be able within a commercially reasonable period of time – to adequately provision high-capacity DS1 and DS3 services to enterprise customers with their current cable plant. Qwest merely reasons that since Comcast and Cox provide mass market offerings, they must possess the “necessary facilities to provide enterprise services.”⁹⁸

But this is wrong because a competitor's ability to serve one market segment does not translate to an ability to serve every market segment. Qwest has not shown that cable operators are able to serve the SME or other business market segments even if they might have facilities passing mass market customers in a wire center, although, as discussed, Qwest has not demonstrated "coverage" of the mass market either.

Qwest conveniently ignores problems that are patent to the ability of cable providers to offer services to the enterprise market, such as the lack of physical reach of the cable facilities. Due to this limitation, even cable companies that have deployed some amount of fiber in a particular MSA can only serve those businesses that are in close proximity to its existing infrastructure. As required by the Commission, a more comprehensive and detailed wire center-

⁹⁷ See Minneapolis Petition at 23; Phoenix Petition at 21; Seattle Petition at 21; Denver Petition at 21.

⁹⁸ See Minneapolis Petition at 21; Phoenix Petition at 21; Seattle Petition at 21; Denver Petition at 21.

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specific analysis is necessary to show if cable operators have plant that could serve enterprise customers anywhere in an MSA. As the Commission recognized in the *Anchorage Order*, General Communications Inc. (“GCI”) served enterprise customers’ telephony needs using a fiber optic network separate from its cable network, and GCI’s fiber optic network “is not deployed as ubiquitously as its cable plant.”⁹⁹ Thus, the Commission cannot rely on the apparent extent of a cable provider’s cable franchise or “homes passed” to determine the potential for the cable provider to provide facilities-based telephony to enterprise customers.

In addition, as the Commission concluded in the *TRRO*, to the extent cable companies serve businesses at all, cable companies focus on selling cable modem services to “home offices or very small stand-alone businesses, neither of which typically requires high-capacity loop facilities.”¹⁰⁰ Most businesses thus far have viewed cable modem service as insufficient for their needs, because “bandwidth, security, and other technical limitations on cable modem service render it an imperfect substitute for service provided over DS1 loops.”¹⁰¹ Cable operators are not able to provide multiple lines with hunting over cable plant, an important service for many business customers. By distorting the cable provider’s abilities within a market, Qwest demon-

⁹⁹ See *Anchorage Order*, n.121. Furthermore, the Commission’s *TRRO* found that cable transmission facilities are not used to serve business customers to any significant degree. See *TRRO*, ¶ 193.

¹⁰⁰ *TRRO*, ¶ 193.

¹⁰¹ *Id.*

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strates a thorough misunderstanding of the technical capabilities required for a cable operator to service enterprise customers.

Qwest submits sweeping generalizations about cable providers potential enterprise offerings without any evidence of any cable providers *actual* enterprise offerings in the MSAs at issue. For example, in Minneapolis and Denver, Qwest refers to an announcement that Comcast's "next great business opportunity" is to offer enterprise telephony services, but the cited document actually only describes Comcast's planned future investment over the next 5 years to serve business customers generally.¹⁰² Moreover, nothing in Qwest's Petitions provides evidence that any of these investments will be made in the MSAs at issue, let alone the wire centers which form the relevant geographic markets.

For Qwest to meet Section 10 of the Act's forbearance standard, it must demonstrate that there is *actual* competition, rather than speculative competition. Qwest offers no real evidence that any cable company operating in the MSAs at issue is providing extensive facilities-based telephony services to enterprise customers today, and its assertions regarding the future of cable-based enterprise telephony competition in the subject MSAs are anecdotal at best. Instead, Qwest focuses solely on a cable company's presence in the MSA as "evidence" that these companies "possess[es] the necessary facilities to provide enterprise services."¹⁰³ In sharp contrast to the situation considered in the *Omaha Order* in fact, Comcast is in the early stages of offering its

¹⁰² See Minneapolis Petition at 23; Denver Petition at 22.

¹⁰³ See, e.g., Denver Petition at 22.

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enterprise services and that, as of May 2006, it did not even offer voice services to business customers.¹⁰⁴ Comcast further acknowledged that “it does not have a substantial market share in the business area...”¹⁰⁵

Accordingly, Qwest has failed to show significant cable competition in the enterprise market segment on either a market share or wire center independent facility basis.

Wireline CLECs. Qwest contends that there are a large number of CLECs providing extensive enterprise retail competition in each MSA.¹⁰⁶ It provides the number of business lines being served by CLECs using Section 251(c)(4) resale or QPP/QLS and provides estimates of lines served by CLECs based on projections from the percentage (36%) of its own business lines that are listed in the white pages. Qwest reasons that based on its internal data regarding the percentage of its customers who have white page listings, it can thereby estimate the number of lines serviced by the CLECs. This presumption is flawed because it assumes that CLEC customers in each of the subject MSAs choose to be listed in the white pages at the same rate as Qwest’s

¹⁰⁴ See Peter Caranicas, *Business Services: Cable’s Last Frontier?*, CABLE360.COM (May 1, 2006).

¹⁰⁵ *Id.*

¹⁰⁶ Denver Petition at 22-24; Minneapolis Petition at 23-25; Phoenix Petition at 23-25; Seattle Petition at 22-24.

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nationwide customer base.¹⁰⁷ This method is unreliable to determine the number of access lines because businesses may only list a main number, as Qwest concedes.¹⁰⁸

In addition, as pointed out by the attached ETI Declaration, Qwest double counts competitors.¹⁰⁹ Far from there being numerous different types of competitors, CLECs are frequently fiber providers, fiber collocators, systems integrators, and even wireless providers. Qwest's description of CLECs does not enumerate an additional type of competitors, but merely for all practical purposes duplicates information provided in its descriptions of other alleged types of competitors.

In addition, Qwest has only cited competitors that use Qwest facilities to provide service. Therefore, they do not constitute the independent facilities-based competition that is necessary to support forbearance.

Wireless. Qwest correctly does not contend that wireless provides a competitive alternative in the business market segments. Qwest makes no claim that business customers are "cutting the cord" and switching to wireless instead of wireline services. And, all of the reasons stated above concerning wireless substitution in the mass market are applicable with even greater force to enterprise market segments. Therefore, there is no basis for the Commission on this

¹⁰⁷ See ETI Declaration, ¶¶14-15.

¹⁰⁸ See Seattle Petition at 23 n.61; Phoenix Petition at 24 n.57; Denver Petition at 23 n.56; Minneapolis Petition at 24 n.61.

¹⁰⁹ ETI Declaration, ¶ 33.

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record to conclude that wireless provides an alternative to Qwest services in any business market segment, including in particular the SME business market segment.

Competitive Fiber. Qwest contends that there are extensive competitive fiber networks in the MSAs in question. It provides the total number of non-Qwest fiber miles in each MSA, states that one or more fiber-based competitor has facilities in a significant percentage of its wire centers that account for a significant percentage of Qwest's residential and business lines in the MSA, names fiber-based providers in the MSA, and attaches a map that purports to show location of competitive fiber in the MSA.¹¹⁰

As explained in the attached ETI Declaration, Qwest's statement of total fiber miles and maps provide absolutely no useful information in terms of identifying actual locations of competitive fiber that could provide service to locations in any wire center. Its maps are virtually illegible. None of Qwest's maps show CLEC facilities in any detail within the respective MSAs.¹¹¹ The "confidential" maps submitted by Qwest consist of small, nearly illegible drawings which it claims show the "coverage" of competitive fiber throughout the MSA. Because of the scale of the maps, the drawings appear simply as a tangle of lines making it impossible to identify any particular streets or buildings. It is impossible to determine whether any competitor has a relatively comprehensive network or whether the lines represent numerous providers, each of which have small fragments of coverage.

¹¹⁰ Denver Petition at Confidential Exhibit 4; Minneapolis Petition at Confidential Exhibit 4; Phoenix Petition at Confidential Exhibit 4; Seattle Petition at Confidential Exhibit 4.

¹¹¹ ETI Declaration, ¶ 43.